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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,343	03/15/2004	Michael Bianco	12715/3	2089

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EXAMINER	
DUONG, THO V	

ART UNIT	PAPER NUMBER
3753	

DATE MAILED: 05/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/801,343	BIANCO, MICHAEL	
	Examiner	Art Unit	
	Tho v. Duong	3753	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *09 May 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *27-47* is/are pending in the application.

4a) Of the above claim(s) *40-47* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *27-39* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *15 March 2004* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *7/2/2004*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Claims 40-47 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected group II, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 5/9/06.

Applicant's election with traverse of group I in the reply filed on 5/9/06 is acknowledged. The traversal is on the ground(s) that the claims of group I and II are sufficiently related to be properly presented in a single application. This is not found persuasive because the basis for restriction is that the group I of claims 27-39 and group II of claims 40-47 are patentably distinct and the search for each patentably distinct is a serious burden to the Office.

The requirement is still deemed proper and is therefore made FINAL.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the claimed subject matter of "a container" and "wherein the heat exchange is situated in an interior of the container on a top side of the container" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet,

even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the claimed subject matters of "wherein the heat exchange is situated in an interior of the container on a top side of the container" and "wherein a distance from the inlet to the outlet is between 3.3 and 3.5 times a height of one of the ends" are not described in the specification.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 30 and 37 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In this instant case, the claimed subject matter of "the heat exchanger is situated in an interior of the container on a top side of the container" and "a distance from the inlet to the outlet is between 3.3 and 3.5 times a height of one of the ends" are not positively supported by the disclosure.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 27-34 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 17 and 20 of U.S. Patent No. 6,715,539 in view of

Grosskopf (US 6,269,652). Claims 17 and 20 of Patent No. 6,715,539 substantially disclose all of the limitations as claimed except for the limitation of a container, which is adapted to contain a produce. Grosskopf discloses a refrigerated body for a truck that employs a refrigerating system in a container of a truck for a purpose of cooling or heating the interior of the container, which is adapted to contain a produce. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ Grosskopf's teaching in Paten 6,715,539 for a purpose of cooling or heating the interior of the container.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 27 and 29-39 are rejected under 35 U.S.C. 102(b) as being anticipated by Marciniak (US 4,544,023). Marchiniak discloses (figures 1-4) a cooling system comprising a container (13) which is adapted to hold a produce; a heat exchanger associated with the container, the heat exchanger comprising a housing adapted to enclose a coil assembly (42), wherein the housing includes a top (26), a bottom (28), two sides (22,24) and two ends (vertical ends), one of the end defining an inlet (34) and the other end partially defining an outlet (36); the coil assembly (42) tilted in an interior of the housing; the coil assembly partially defining in the housing on opposite side of the coil assembly a first airflow plenum and a second airflow plenum, wherein a cross-sectional area of the first airflow plenum diminishes as the air flow is

distributed from the inlet (36) and the cross-section area of the second airflow plenum increases as the airflow is distributed over the coil assembly toward the outlet (36); at least one air mover (80) situated adjacent to the housing; the air mover (80) configured to draw airflow through the second airflow plenum in a first direction (downward); the air mover (80) directing the airflow from the second airflow plenum in a second direction (horizontally) substantially perpendicular to the first direction; a further heat exchanger (40) associated with the container; the heat exchanger (42) is situated in an interior of the container (13) on a top half of the container. Regarding claims 27 and 31-34, It has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. In re Hutchison, 69 USPQ 138. In this instant case, the container (13) and the heat exchanger system has an ability to contain fresh produce, to control ripening of fresh produce or to contain marine product or be a transit place to transport the produce from one place to another place. Regarding claim 37, basing on geometrical relationship between a distance from the inlet (34) and the outlet (36) and a height of the upper end, as shown in figure 3, the ratio between the distance from the inlet to outlet and a height of the upper end is approximately within the claimed range. Furthermore, applicant has not disclosed that having the ratio of distance of 3.3 –3.5 between the inlet and the outlet and a height of one end, would solve any stated problem nor disclose any criticality for selecting the claimed ration. Moreover, it appears that the system would perform equally well with any ratio or as shown in the prior art. Accordingly, the claimed ratio is deemed to be a design consideration, which fails to patentably distinguish over the prior art of Marchiniak.

Claims 27 and 29-39 are rejected under 35 U.S.C. 102(b) as being anticipated by Viegas et al. (US 4,182,134). Viegas discloses (figure 2) a cooling system comprising a container (12) which is adapted to hold a produce; a heat exchanger associated with the container, the heat exchanger comprising a housing adapted to enclose a coil assembly (60), wherein the housing includes a top (42), a bottom (44), two sides (46) and two ends (vertical ends), one of the end defining an inlet (52) and the other end partially defining an outlet (68); the coil assembly (60) tilted in an interior of the housing; the coil assembly partially defining in the housing on opposite side of the coil assembly a first airflow plenum and a second airflow plenum, wherein a cross-sectional area of the first airflow plenum diminishes as the air flow is distributed from the inlet (52) and the cross-section area of the second airflow plenum increases as the airflow is distributed over the coil assembly toward the outlet (68); at least one air mover (70) situated adjacent to the housing; the air mover (70) configured to draw airflow through the second airflow plenum in a first direction (upward); the air mover (70) directing the airflow from the second airflow plenum in a second direction (horizontally) substantially perpendicular to the first direction; a further heat exchanger (72) associated with the container; the heat exchanger (60) is situated in an interior of the container (13) on a top half of the container. Regarding claims 27 and 31-34, it has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. In re Hutchison, 69 USPQ 138. In this instant case, the container (12) and the heat exchanger system has an ability to contain fresh produce, to control ripening of fresh produce or to contain marine product. Regarding claim 37, basing on geometrical relationship between a distance from the inlet (52) and the outlet (68) and a height of

the upper end, as shown in figure 2, the ratio between the distance from the inlet to outlet and a height of the upper end is approximately within the claimed range. Furthermore, applicant has not disclosed that having the ratio of distance of 3.3 –3.5 between the inlet and the outlet and a height of one end, would solve any stated problem nor disclose any criticality for selecting the claimed ration. Moreover, it appears that the system would perform equally well with any ratio or as shown in the prior art. Accordingly, the claimed ratio is deemed to be a design consideration, which fails to patentably distinguish over the prior art of Viegas.

Allowable Subject Matter

Claim 28 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. A filing of a terminal disclaimer is also required for claim 28 to be allowed.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Kim (US 5,542,469) discloses an indoor unit of air conditioner.

Bongaards et al. (US 6,357,248) discloses a compact transport temperature control unit.

Cantagallo et al. (US 3,733,849) discloses an apparatus for transportation of commodities.

Simeone et al. (US 6,497,112) discloses a mobile temperature controlled container.

King (US 4,748,825) discloses a bus air conditioning unit.

Levy (US 3,831,395) discloses an air conditioner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tho v. Duong whose telephone number is 571-272-4793. The examiner can normally be reached on M-F (first Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keasel Eric can be reached on 571-272-4929. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tho v Duong
Primary Examiner
Art Unit 3753

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May 19, 2006